

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Katherine O'Connor	Team: Team # 1	CCRB Case #: 200514624	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 12/06/2005 12:11 AM	Location of Incident: Corner of Convent Avenue and W. 133rd Street	Precinct: 26	18 Mo. SOL 6/6/2007	EO SOL 6/6/2007	
Date/Time CV Reported Tue, 12/06/2005 1:12 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 12/06/2005 1:12 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Gregory Pekera	04870	919546	PBMN AC
2. POM Daniel Kobylinski	29105	920471	PBMN AC

Officer(s)	Allegation	Investigator Recommendation
A.SGT Gregory Pekera	Abuse: Sgt. Gregory Pekera stopped the car in which § 87(2)(b) was an occupant.	
B.SGT Gregory Pekera	Abuse: Sgt. Gregory Pekera frisked § 87(2)(b)	
C.SGT Gregory Pekera	Abuse: Sgt. Gregory Pekera searched § 87(2)(b)	
D.POM Daniel Kobylinski	Abuse: PO Daniel Kobylinski frisked § 87(2)(b) and § 87(2)(b)	
E.POM Daniel Kobylinski	Abuse: PO Daniel Kobylinski searched § 87(2)(b) and § 87(2)(b)	
F.POM Daniel Kobylinski	Abuse: PO Daniel Kobylinski searched the car in which § 87(2)(b) was an occupant.	
G.POM Daniel Kobylinski	Abuse: PO Daniel Kobylinski damaged § 87(2)(b)'s property.	
H.SGT Gregory Pekera	Abuse: Sgt. Gregory Pekera searched the car in which § 87(2)(b) was an occupant.	
I.SGT Gregory Pekera	Abuse: Sgt. Gregory Pekera refused to provide his name and/or shield number to § 87(2)(b)	
J.POM Daniel Kobylinski	Abuse: PO Daniel Kobylinski refused to provide his name and/or shield number to § 87(2)(b)	

Synopsis

On December 6, 2005 at approximately 12:11am, § 87(2)(b) was driving in Manhattan with his son, § 87(2)(b) and brother, § 87(2)(b) when he was pulled over by an unmarked black Crown Victoria at the corner Convent Avenue and W. 134th Street [**Allegation A**]. Two officers (identified as Sgt. Gregory Pekera and PO Daniel Kobylinski, both of Manhattan North Anti-Crime) exited the Crown Victoria and approached his car. Sgt. Pekera instructed § 87(2)(b) to exit his car. § 87(2)(b) explained that he worked as a fraud investigator and was on duty at the time. He told Sgt. Pekera that he had credentials to prove it, but Sgt. Pekera instructed him to exit the car again. § 87(2)(b) complied, and after he got out, Sgt. Pekera frisked and searched him [**Allegation B** and **Allegation C**]. When he finished, PO Kobylinski instructed § 87(2)(b) to exit the car, which he did. PO Kobylinski then frisked and searched § 87(2)(b) [**Allegation D** and **Allegation E**]. When he finished, PO Kobylinski told § 87(2)(b) to exit the car, and he frisked and searched § 87(2)(b) as well [**Allegation D**, cont. and **Allegation E**, cont.]. Following § 87(2)(b)'s search, PO Kobylinski searched § 87(2)(b)'s car [**Allegation F**], damaging the rear seat in the process [**Allegation G**]. After PO Kobylinski had searched the seating areas, he and Sgt. Pekera asked § 87(2)(b) to open his trunk, and the two officers searched the trunk together [**Allegation H**]. Throughout the stop, § 87(2)(b) attempted to determine why he had been stopped, but the officers did not tell him why, other than that it was a "routine check." When § 87(2)(b) asked Sgt. Pekera for his name, Sgt. Pekera replied that his name was "Sgt. Matt." As the officers were leaving, § 87(2)(b) asked them both for their names and badge numbers again, but neither provided any identification [**Allegation I** and **Allegation J**].

§ 87(2)(g)

Summary of Complaint

On December 6, 2005, CCRB received the complaint of § 87(2)(b) (encl. 7a-b). Phone contact was established with § 87(2)(b) on December 13, 2005, and he provided a brief narrative that day (encl. 8a-b). § 87(2)(b) was interviewed at the CCRB on January 24, 2006 (encl. 9a-e). On April 12, 2006, he made a second sworn statement and viewed two photo arrays at the CCRB (encl. 10a-d). § 87(2)(b) is a § 87(2)(b) Hispanic male § 87(2)(b).

He provided the following statement to the CCRB:

On December 6, 2005 at approximately 12:11am, § 87(2)(b) was driving northbound on Morningside Avenue in Manhattan in his dark blue 2000 Buick Park Avenue, license plate number § 87(2)(b). § 87(2)(b) works as a private investigator and he explained that on that night, he was conducting observations of vehicles parked in the vicinity of where he was driving to determine whether they were stolen. He was working with his brother, § 87(2)(b) and son, § 87(2)(b) who were sitting in the front passenger seat and back seat, respectively. As § 87(2)(b) drove, § 87(2)(b) and § 87(2)(b) entered vehicles' license plate numbers into a computer to determine if these vehicles' information was legitimate. Due to the fact that they were trying to get accurate readings of the license plates, they were driving very slowly, between ten and fifteen miles per hour. When he reached the intersection of W. 125th Street and Morningside Avenue, § 87(2)(b) noticed a black, unmarked Crown Victoria sedan stopped at a traffic light. § 87(2)(b) stated that this intersection is relatively well lit, and that he knew it was a Crown Victoria because he is familiar with car makes and models. After § 87(2)(b) drove through the intersection, the black sedan turned from W. 125th Street onto Morningside Avenue and began to follow him. § 87(2)(b) continued to drive north on Morningside Avenue—which eventually turned into Convent Avenue—and the Crown Victoria continued to stay behind him. When he reached W. 133rd Street, the Crown Victoria turned on a set of red and blue lights on its dashboard, and sounded its siren one time. § 87(2)(b) pulled over on the right side of the street between W. 133rd Street and W. 134th Street (on Convent Avenue), and the Crown Victoria pulled up behind him.

§ 87(2)(b) rolled down his vehicle's windows and turned on his interior lights. An unidentified male officer (identified through investigation as Sgt. Gregory Pekera of Manhattan North Anti-Crime) approached § 87(2)(b)'s driver's side door. § 87(2)(b) described Sgt. Pekera as a white male, approximately 5'7", 180 lbs., in his late 30s, with spiky black or gray hair, a slight beard, wearing a black jacket and jeans. His badge was not visible to § 87(2)(b). A second officer (identified through investigation as PO Daniel Kobylinski of Manhattan North Anti-Crime) exited the Crown Victoria, and walked over to the rear passenger side of § 87(2)(b)'s vehicle. PO Kobylinski was described as a white male, approximately 5'11", with a slim build (160-180lbs.), in his early 30s, with full, grayish hair. He was wearing a hooded sweatshirt and jeans, and had a silver officer badge hanging around his neck upside-down—because the badge was upside-down, § 87(2)(b) could not see it properly. Sgt. Pekera told § 87(2)(b) that he needed him to step out of the vehicle. § 87(2)(b) asked what was going on, and Sgt. Pekera repeated that he needed to step out of the vehicle. § 87(2)(b) exited his car, and Sgt. Pekera instructed him to walk to the rear driver's side. § 87(2)(b) did so, placed his hands on the top of his car, and Sgt. Pekera began to frisk him. First, he patted § 87(2)(b) down for "a good five or ten minutes." At the time, § 87(2)(b) was carrying equipment for his job on his belt—he had with him a flashlight, two pairs of handcuffs, and a gun holster. § 87(2)(b) did not have any guns with him that night because he is not registered to carry a gun in New York State, only in New Jersey, where he lives). Sgt. Pekera lifted up § 87(2)(b)'s shirt to examine the equipment, and he asked § 87(2)(b) what he was doing. § 87(2)(b) explained that he was a private investigator and that he had his credentials with him to prove it. Sgt. Pekera continued to pat § 87(2)(b) down on his sides, chest, genital area, and legs, lifting up his pants. Then, he reached into § 87(2)(b)'s pants pockets, as well as into the front pocket of the hooded sweatshirt he was wearing. In searching his pockets, Sgt. Pekera removed § 87(2)(b)'s wallet, which contained his work identification. During the search, § 87(2)(b) asked Sgt. Pekera for his name and badge number, and Sgt. Pekera replied that his name was "Sergeant Matt," but he did not display his shield. While Sgt. Pekera was searching § 87(2)(b) PO Kobylinski stood on the passenger side of the car, watching § 87(2)(b) and § 87(2)(b). After Sgt. Pekera finished searching § 87(2)(b) he told him to move from his driver's side to the back of the vehicle, and to sit down on his car's rear bumper. § 87(2)(b) complied and went to the back of the car.

Sgt. Pekera then instructed § 87(2)(b)'s brother, § 87(2)(b) to step out of the vehicle. § 87(2)(b) exited and walked to the rear passenger side of the car, and PO Kobylinski began to search him. The search was conducted approximately four feet to the left of where § 87(2)(b) was sitting. § 87(2)(b) was not facing § 87(2)(b) and PO Kobylinski during the search, but he stated that PO Kobylinski did reach into § 87(2)(b)'s pockets and removed his hat from his head at one point. He stated that § 87(2)(b) had his work identification in his hand when he exited the car, but PO Kobylinski did not look at it at any point. While § 87(2)(b) was being searched, § 87(2)(b) asked Sgt. Pekera why he and his partner were doing what they were doing. Sgt. Pekera replied that they were just conducting a routine check, and that there were "a lot of guys impersonating officers out here." § 87(2)(b) asked him again for his badge number, and Sgt. Pekera repeated that his name was "Sgt. Matt," and stated that he worked for the Auto Crime division. When § 87(2)(b) asked what precinct he was from, Sgt. Pekera told him that Auto Crime officers generally work "all over," and that they don't work out of any specific precinct. He then told § 87(2)(b) to "relax" and "not to worry about it." Following § 87(2)(b)'s search, PO Kobylinski told him to sit next to § 87(2)(b) on the back bumper of the car. PO Kobylinski then instructed § 87(2)(b)'s son, § 87(2)(b) to exit the car, which he did. § 87(2)(b) stated that § 87(2)(b) was "upset," and asked the officers what was going on and why they were treating him and his relatives in this way. When § 87(2)(b) exited the car, PO Kobylinski began to frisk him, as well. This frisk lasted approximately five minutes, and it was conducted in the same place where § 87(2)(b) had been searched. § 87(2)(b) did not see PO Kobylinski remove anything from § 87(2)(b) but stated that he was patted down in the same way he had been patted down earlier.

After PO Kobylinski finished searching § 87(2)(b) he began to search § 87(2)(b)'s vehicle. He first walked over to the front passenger side, searched under the front seat, and opened the glove compartment and the center console. As this was going on Sgt. Pekera remained standing next to § 87(2)(b) outside the car. PO Kobylinski then searched the back seat area, and as he was searching under the back seats, he lifted up the seat from its base, damaging the bottom of the seat. § 87(2)(b) explained that the back seat is held down to the floor with a set of clips, and PO Kobylinski "ripped" the seat from the clips, bending the clips in the process. (The clips have since been repaired). He then went to the front driver's side door, and searched under the driver's seat. In the process of searching the car, PO

Kobylinski moved several of § 87(2)(b)'s papers around, leaving many of them in disarray. After PO Kobylinski searched the car's interior, Sgt. Pekera asked § 87(2)(b) to open his car's trunk so that it could be searched, and § 87(2)(b) complied. Both officers then searched § 87(2)(b)'s vehicle's trunk, which contained paperwork and a bulletproof vest § 87(2)(b) uses for his job. While they were searching the trunk, § 87(2)(b) told the officers that what they were doing was not right, and that they had no grounds to search his car. By this point, § 87(2)(b) noticed that several cars were beginning to drive past, and he also saw that there were some people standing on the street nearby. § 87(2)(b) mentioned to § 87(2)(b) that there were witnesses in the area who could see what was going on. When § 87(2)(b) said this, the officers ran back toward their car and got inside. § 87(2)(b) asked for their identification again, but the officers drove away before he was able to get it. As they were driving away, § 87(2)(b) attempted to take a picture of the car's rear license plate. However, the plate was folded up in such a way that made it difficult to view its number. The entire incident lasted approximately thirty minutes, and no summonses were issued by either officer. § 87(2)(b)'s wallet was returned to him before the officers left the scene. Following the incident, § 87(2)(b) went to the 26th Precinct with § 87(2)(b) and § 87(2)(b) to file a complaint.

§ 87(2)(b) did not know if anything was removed from his car during the search, but he stated that since the incident, he has been unable to locate a digital camera that was in the car at the time of the search. § 87(2)(b) said that the camera had been hanging from a lanyard around the driver's side head rest before he was stopped by the officers, but he did not see either of the officers take the camera. § 87(2)(b) was never asked for his driver's license, insurance card or vehicle registration. The Crown Victoria did not have a front license plate. At no point did § 87(2)(b) or § 87(2)(b) ever raise their voices to the officers or use profanity toward them. § 87(2)(b) stated that he would be able to identify Sgt. Pekera and PO Kobylinski if shown photographs of them.

During § 87(2)(b)'s second interview conducted on April 12, 2006, he looked at two photo arrays, one containing a photo of Sgt. Pekera, and the other containing a photo of PO Kobylinski. He also provided a brief follow-up statement to his original interview (encl. 10a-d):

In the first photo array, PO Daniel Kobylinski's photograph was labeled as # 5. All the other officer photographs were fillers. § 87(2)(b) identified the officer in photo # 4, stating that his "Face looks somewhat [like] sergeant on scene." He stated that he was "50% sure that this was the sergeant on the scene" at the time of the incident. He did not recognize any of the other officers in the other photographs in the first photo array. In the second photo array, Sgt. Gregory Pekera's photograph was labeled as # 3. All the other officer photographs were fillers. § 87(2)(b) did not identify any of the officers in the second array.

§ 87(2)(b) stated that at the time of the vehicle stop on December 6, 2005, he had two bulletproof vests in the trunk of his car. The trunk is not accessible from the interior seating area. He did not have any other equipment in his car that he could recall. Nobody in the vehicle was wearing a bulletproof vest at the time of the stop. § 87(2)(b) and § 87(2)(b) were not carrying any equipment on their bodies at the time of the stop.

§ 87(2)(b) stated that he had the damaged seat clips repaired since the incident. He also stated that he had saved the invoice for these repairs. The undersigned made numerous attempts to obtain this invoice, yet § 87(2)(b) has repeatedly failed to produce it. He stated that he would bring the invoice with him to his April 12, 2006 interview. When he did not bring it then, he said he would fax it to the CCRB the following day. He failed to fax the invoice, and the undersigned called him to ask him to fax it again on April 14, 2006. April 17, 2006, the undersigned called and reached § 87(2)(b) who said he would fax it to the CCRB that day. He still has not faxed the invoice, § 87(2)(g)

Results of Investigation

Victim Statements

§ 87(2)(b)

§ 87(2)(b) was interviewed at the CCRB on January 24, 2006 (encl. 11a-e). He viewed a photo array and provided a follow-up statement on April 12, 2006 (12a-d). § 87(2)(b) is a § 87(2)(b) Hispanic

male who works with his brother, § 87(2)(b) and nephew, § 87(2)(b) § 87(2)(b) He lives at § 87(2)(b) in Brooklyn. § 87(2)(g)

§ 87(2)(b) described Sgt. Pekera as a white male in his late 20s or early 30s, clean-cut, with short, black hair, approximately 5'7", with a medium build, and wearing a black or gray coat and blue jeans and no badge. PO Kobylinski was also a white male in his late 30s or early 40s, with thinning, reddish hair, approximately 5'10" with a thin build, wearing jeans and a light-colored jacket with a Yankee logo on it. He wore a badge around his neck, but it was upside down and turned backwards, so § 87(2)(b) was not able to observe it. Because § 87(2)(b) and his family are used to being pulled over by the police (due to the nature of their work), he removed his phone so that if he needed to call somebody for assistance, he could do so easily. When PO Kobylinski reached the vehicle, he told § 87(2)(b) to put his phone away.

After § 87(2)(b) had been escorted from the car, PO Kobylinski told § 87(2)(b) to exit and move to the rear of the vehicle, and he did so. When § 87(2)(b) reached the back of the car, he saw that Sgt. Pekera was searching § 87(2)(b) next to where he was standing. During the search, Sgt. Pekera asked § 87(2)(b) for his identification, so § 87(2)(b) reached into his wallet (which had been in his pocket), removed an ID card, and handed it to Sgt. Pekera. § 87(2)(b) estimated that Sgt. Pekera's search of § 87(2)(b) lasted approximately one minute. While Sgt. Pekera was still in the middle of searching § 87(2)(b) PO Kobylinski began to search § 87(2)(b) at the rear of the vehicle. The search was conducted "face to face," with § 87(2)(b) standing behind § 87(2)(b)'s car, facing PO Kobylinski with his arms spread out to the sides. PO Kobylinski patted him down and reached into his pants and coat pockets, but did not remove anything from them. § 87(2)(b) was wearing a black jacket, a hooded sweatshirt and blue jeans). The search of § 87(2)(b) lasted approximately one minute, and it took place at the same time that Sgt. Pekera was searching § 87(2)(b). Sgt. Pekera then went back to the rear passenger door and instructed § 87(2)(b) to exit the car. § 87(2)(b) did so, and was escorted to the rear of the vehicle, where he stood between where § 87(2)(b) and § 87(2)(b) were sitting. Sgt. Pekera had § 87(2)(b) face away from him, and he proceeded to search § 87(2)(b)'s pockets, but did not remove anything. § 87(2)(b)'s search lasted approximately one minute, and while it was going on, PO Kobylinski was standing in front of § 87(2)(b) not doing anything.

When Sgt. Pekera finished searching § 87(2)(b) PO Kobylinski walked to the front of § 87(2)(b)'s car—§ 87(2)(b) believed that he searched the car. Because he was facing away from the vehicle, § 87(2)(b) did not have a good view of PO Kobylinski conducting the search, but he was able to hear and feel him making movements inside his brother's vehicle. From the corner of his eye, he saw PO Kobylinski open and close the vehicle's doors. Each time he tried to look backward to observe the search, Sgt. Pekera told him that he had to "face forward." While this was going on, § 87(2)(b) asked Sgt. Pekera for his name, but § 87(2)(b) did not recall if he ever provided it. When PO Kobylinski finished the vehicle search, he and Sgt. Pekera went back to their car and told the § 87(2)(b) to "have a good night." The entire incident lasted approximately thirteen to fifteen minutes.

During § 87(2)(b)'s second interview conducted on April 12, 2006, he looked at two photo arrays, one containing a photo of Sgt. Pekera, and the other containing a photo of PO Kobylinski. He also provided a brief follow-up statement to his original interview (12a-d):

In the first photo array, PO Daniel Kobylinski's photograph was labeled as # 5. All the other officer photographs were fillers. § 87(2)(b) identified the officer in photograph # 2 as the "officer doing questioning and pat down. Not in vehicle." He stated that the officer in photograph # 2 looked like the officer who questioned him, not the officer who searched his brother § 87(2)(b)'s vehicle. § 87(2)(b) did not recognize any of the other five officers in the photo array.

In the second photo array, Sgt. Gregory Pekera's photograph was labeled as # 3. All the other officer photographs were fillers. § 87(2)(b) identified the officer in photograph # 6, stating that he "Looks similar to [the] officer that watched us but younger. Possibly not him, but if it's a younger picture, it's possible. Not in car." § 87(2)(b) was referring to the officer that questioned him and did not search his brother's car. He also identified the officer in photograph # 4 as "Possible picture of officer that searched the car, but hair style is different and does look a bit younger." He then identified the officer in photograph # 3, stating that "Hair and forehead looks similar to officer that wasn't in vehicle, but I doubt

it's him. Something about him looks different.” He referred to # 3 as the officer that did not search the vehicle. § 87(2)(b) did not recognize photograph # 1, # 2 or # 5.

At the time of the vehicle stop on December 6, 2005, § 87(2)(b) had a bulletproof vest lying on the floor of the back seat area. None of the vehicle's occupants were wearing bulletproof vests at the time of the stop that § 87(2)(b) could recall.

§ 87(2)(b)

§ 87(2)(b) was interviewed at the CCRB on January 24, 2006 (13a-e). He viewed a photo array and provided a follow-up statement on April 12, 2006 (14a-d). § 87(2)(b) is a § 87(2)(b) Hispanic male who works with his father, § 87(2)(b) and uncle, § 87(2)(b). § 87(2)(b) He currently lives at § 87(2)(b). He provided the following statement to the CCRB:

§ 87(2)(b) described Sgt. Pekera as a white male with “slicked back” dark hair, about 5’8”, approximately 180-200 lbs., and in his mid- to late-30s. He was wearing a black jacket with several pockets, blue pants, and did not have a badge visible on his person. PO Kobylinski was described as a white male, with thinning, whitish hair, in his late 30s, approximately 6’1”, with a thin build. He was wearing a gray hooded sweatshirt, jeans, and had a silver badge hanging from the drawstrings on his sweatshirt. After Sgt. Pekera instructed § 87(2)(b) to exit the car, § 87(2)(b) did not see what went on between them because the car’s body and the direction he was facing at the time obstructed his view. When PO Kobylinski instructed § 87(2)(b) to exit the car, he complied and stood next to the front passenger side door. § 87(2)(b) saw PO Kobylinski search § 87(2)(b) by unzipping his coat and checking inside his coat pockets. He also reached into his outside pockets. After he finished searching § 87(2)(b) PO Kobylinski approached § 87(2)(b)’s window and instructed him to exit the vehicle. When § 87(2)(b) exited the car, he saw that his father and uncle were sitting next to each other on the rear bumper of their car. Sgt. Pekera had § 87(2)(b)’s identification in his hand, and he was examining it. § 87(2)(b) did not see how Sgt. Pekera obtained the identification, and he did not see his father hand it to him.

PO Kobylinski then began to search § 87(2)(b). He patted him down on his chest and near the waist of his pants, and then reached into his inside and outside jacket pockets, one of which contained a flashlight. He did not search his pants pockets. At one point, PO Kobylinski asked him what the item in his pocket was, and § 87(2)(b) told him it was a flashlight. PO Kobylinski did not remove the flashlight from his pocket. When he finished the search, PO Kobylinski told § 87(2)(b) to sit down on the driver’s side of the bumper, next to his father. While § 87(2)(b) was sitting on the bumper, he was able to look backward toward the main section of his father’s vehicle. He saw PO Kobylinski enter the vehicle and begin to search it. While PO Kobylinski was searching the car, Sgt. Pekera and § 87(2)(b) began to speak to one another. Sgt. Pekera told § 87(2)(b) that they were “looking for bounty hunters,” and then asked § 87(2)(b) about the kind of work he did. § 87(2)(b) explained that he and his family members worked as fraud investigators. § 87(2)(b) told him that he occasionally did work for bounty hunters, but that he and his family were not bounty hunters themselves. § 87(2)(b) told Sgt. Pekera that he knew a sergeant who worked for the NYPD, and Sgt. Pekera replied that he, too, was a sergeant, and that his name was “Matt.” § 87(2)(b) stated that neither he nor § 87(2)(b) asked the officers for their names and shield numbers, but he did not know if his father ever asked the officers for their identification.

When PO Kobylinski finished searching the car, Sgt. Pekera asked him if there was “anything in [the car].” PO Kobylinski replied that there was nothing in the vehicle, and Sgt. Pekera instructed § 87(2)(b) and § 87(2)(b) to get back into their car. At some point, § 87(2)(b) heard one of the officers mention something about a bulletproof vest in the back of the car, which there was. § 87(2)(b) mentioned that he was wearing a bulletproof vest that night). Once they were inside the car, Sgt. Pekera told § 87(2)(b) to open his trunk. § 87(2)(b) did so, and both Sgt. Pekera and PO Kobylinski began to search it. Because he was inside the car, § 87(2)(b) did not see them search it, but he heard the officers move papers and boxes around inside the trunk. In total, the officers searched the trunk for about “two or three minutes.” When they finished, they closed the trunk and began to walk back to their vehicle. As they were returning to their car, § 87(2)(b) got out of his car to tell the officers that they had left the inside of the car a mess, but the officers quickly left the scene.

During § 87(2)(b)'s second interview conducted on April 12, 2006, he looked at two photo arrays, one containing a photo of Sgt. Pekera, and the other containing a photo of PO Kobylinski. He also provided a brief follow-up statement to his original interview (14a-d):

In the first photo array, PO Daniel Kobylinski's photograph labeled as # 5. All the other officer photographs were fillers. § 87(2)(b) did not identify any of the officers in this array. In the second photo array, PO Gregory Pekera's photograph was labeled as # 3. All the other officer photographs were fillers. § 87(2)(b) did not identify any of the officers in this array.

At the time § 87(2)(b)'s vehicle was stopped on December 6, 2005, there was a bullet-proof vest (which belonged to § 87(2)(b) sitting on the back seat of the car, next to where § 87(2)(b) was sitting. § 87(2)(b) was also wearing another bulletproof vest at the time of the stop. This vest was worn under his jacket but over his shirt. His jacket was unzipped, and he stated that it would have been visible to onlookers. The vest was described as navy blue with light blue and yellow letters on the chest, spelling out the word "Extreme." At one point, the officer wearing his shield around his neck (PO Kobylinski) asked about the bulletproof vest in the car, and § 87(2)(b) explained why he had it (because he was a repossession investigator). In addition to the vest, there was also a digital camera, a laptop computer, and Radio Shack walkie-talkies in the front seat, as well as paperwork, and a cell phone in the back as well. Because the car belonged to his father, § 87(2)(b) stated that he did not know what else could have been in the car because he did not spend much time in it.

Officer Statements

Sgt. Gregory Pekera, Manhattan North Anti-Crime

Sgt. Gregory Pekera was interviewed at the CCRB on March 15, 2006 (17a-b). On December 5, 2005, Sgt. Pekera worked from 5:13pm to 2:10am on December 6, 2005. He was assigned to patrol the 26th Precinct with PO Daniel Kobylinski. He was in plainclothes and was assigned to an unmarked black Crown Victoria with tinted windows (RMP# 928). He did not recall the license plate number of this RMP. He had no memo book entries regarding this incident (encl. 16a-b), and he provided the following oral statement.

Sgt. Pekera works for the Manhattan North Anti-Crime Auto Larceny Unit. He stated that as a member of this unit, he makes many car stops while on patrol. Typically, the primary duties he performs while on patrol include stopping cars for VTL violations, running license plates, observing window stickers on cars for authenticity, and verifying registration dates. On December 6, 2005 at approximately 12:11am, Sgt. Pekera was out "doing [his] patrolling." He did not recall if he made any vehicle stops around that time. He did not specifically recall making any vehicle stops during his entire tour from December 5 to December 6, 2005. Sgt. Pekera was shown a New York State Police warrant check record with his own tax registry number attached to the record. According to this document, an officer logged into a computer under Sgt. Pekera's tax number and ran a license plate check on a New Jersey license plate with the number § 87(2)(b) at 11:52pm on December 5, 2005. Sgt. Pekera did not recall running any license plate checks at this time. He did not recall stopping any vehicles looking similar to a dark blue Buick Park Avenue at the time of the alleged incident. He did not remember actually driving in the vicinity of W. 133rd Street and Convent Avenue at the time of the incident, nor did he remember seeing any vehicles driving at slower-than-average speeds at that time. He did not recall if he instructed any individuals to exit their vehicles on the date and time of the incident. He stated that "if there is a reason to," it is not uncommon for him to order people to exit their vehicles. Typical reasons for instructing one to exit their car include when he observes contraband or evidence of drugs or drug paraphernalia. Sgt. Pekera stated that "once or twice a night" he instructs drivers to exit their vehicles. He did not recall if he observed any contraband or drug paraphernalia in any individual's car on the date of the incident.

Sgt. Pekera did not remember stopping any vehicle containing three men with physical descriptions similar to those of § 87(2)(b) or § 87(2)(b) at the time of the incident. He did not recall any civilians ever identifying themselves to him by their names or professions. It was explained to Sgt. Pekera that the § 87(2)(b) family was conducting work pursuant to fraud investigations and repossessions. At the time they were stopped, they were entering the license plate numbers of vehicles in the area into a computer. Sgt. Pekera did not recall stopping any individuals who were conducting work of this nature. When told that the individuals had several work-related items in their car, including a bullet-proof vest, Sgt. Pekera stated that "the bullet-proof vest sounds familiar," but he did not recall anything more about what he

was doing or what he observed when he noticed the vest. He was unable to provide any specific information about this vest, only that it sounded “familiar” to him—he could not specify why it sounded familiar. He did not recall stopping anybody in the vicinity of W. 133rd Street and Convent Avenue who claimed that they were fraud or repossession investigators. When asked if he recalled interacting with anybody who had handcuffs, a gun holster, or a flashlight on their person, Sgt. Pekera said that he did not. He explained that he has stopped and questioned bail agents and people carrying similar items on their persons in the past, but he could not specifically recall stopping anybody of that description during his December 5 to December 6, 2005 tour. He stated that if he conducted a vehicle stop where he observed items such bullet-proof vests or gun holsters in the car, it would “absolutely” be routine to order the individuals out of the car, conduct a frisk and a search of the reachable areas of the vehicle. Sgt. Pekera did not recall speaking with anybody during his tour that claimed to know police officers or sergeants in the NYPD. He did not recall telling any civilians that he was a sergeant and that he worked for the Auto Larceny Unit on the night of the incident, though he stated that he “could have” said this.

Sgt. Pekera did not recall whether he conducted any stop, question and frisks or searches of anybody’s person on the night of the incident. He did not recall whether he or his partner, PO Kobylinski, ever searched any vehicles on the night of the incident, either. He did not recall ever conducting any searches that night that involved removing the rear seat of a vehicle from its floor fasteners. Sgt. Pekera stated that he has conducted vehicle searches in the past where he had to lift the back seat off the floor of the car interior, but he could not recall if he ever did a search of this nature on the night of the incident. He did not recall any civilians ever asking him or his partner for their names or identification. He did not recall ever identifying himself to anybody on the night of the incident. He did not recall stopping any cars with large amounts of paperwork in them. Sgt. Pekera did not specifically recall ever damaging anybody’s property on the date of the incident, though he stated, “We don’t damage people’s property,” either accidentally or purposefully.

PO Daniel Kobylinski, Manhattan North Anti-Crime

PO Kobylinski of the Manhattan North Anti-Crime Auto Larceny Unit was interviewed at the CCRB on April 4, 2006 (encl. 20a-b). On December 5, 2005, PO Kobylinski worked from 5:30pm to 2:05am on December 6, 2005. He was assigned to patrol in the confines of the 26th Precinct with Sgt. Gregory Pekera. He was in plainclothes, and was working in an unmarked Crown Victoria, RMP # 928 (Sgt. Pekera was the operator). He did not know the license plate of the vehicle. He had no memo book entries regarding this incident (encl. 19), § 87(2)(g)

At approximately 12:11am on December 6, 2005, PO Kobylinski was on patrol in the 26th Precinct. He could not recall specifically what area he was patrolling at that time. It was explained to PO Kobylinski that an individual identified as § 87(2)(b) was driving a blue Buick Park Avenue sedan in Manhattan with his brother, § 87(2)(b) and his son, § 87(2)(b). He was pulled over by two unidentified male officers in a black Crown Victoria in the vicinity of W. 133rd Street and Convent Avenue. PO Kobylinski was shown a record of a license plate check that was run on § 87(2)(b)’s license plate number, § 87(2)(b) on December 6, 2005, prior to the alleged time of the vehicle stop. PO Kobylinski did not recall stopping anybody who fit this description on that day and time. He stated that he runs “dozens and dozens” of license plates, and that he did not recall running that particular one on the date of the incident. When asked if he and his partner made any vehicle stops during their tour on December 5, 2005 and December 6, 2005, he stated, “I know I made stops, but I just don’t recall this particular incident.”

When shown pictures of § 87(2)(b) and § 87(2)(b) PO Kobylinski stated that he did not recognize any of them. It was explained to PO Kobylinski that § 87(2)(b) and his family work as fraud investigators, and that they carry various types equipment related to their jobs, including gun holsters, bullet-proof vests and handcuffs. When asked if he had any interaction with people who identified themselves as being in this line of work, or who had this type of equipment with them, he stated that he could not recall coming into contact with anybody who fit this description. He did not remember coming across any individual that had a gun holster on their person. He was not aware of any individuals ever attempting to take photographs of his RMP on the day of the incident. PO Kobylinski stated that it is “not normal” for him to patrol the 26th Precinct, and that he typically works in the 33rd and 34th Precincts. He

was therefore unable to provide conditions information on the areas he patrolled within the 26th Precinct on December 5, 2005 and December 6, 2005.

NYPD Documents

The **sprint index** (encl. 21) ranging from 10:00pm on December 5, 2005 to 3:00am on December 6, 2005 in the vicinity of the 26th Precinct did not list any sprints originating in the vicinity of W. 134th Street and Convent Avenue at the time § 87(2)(b) was pulled over. The **stop, question and frisk log** (encl. 22) from Manhattan North Anti-Crime does not list any stop, question and frisks being conducted of § 87(2)(b) or § 87(2)(b) on December 5 or December 6, 2005. The **finalized roll call** (encl. 23) from Manhattan North Anti-Crime indicates that Sgt. Pekera worked from 5:23pm on December 5, 2005 to 2:10am on December 6, 2005, and that PO Kobylinski worked from 5:30pm on December 5, 2005 to 2:05am on December 6, 2005. They were assigned to auto larceny, and worked in RMP # 926. **Vehicle information** (encl. 24) from Manhattan North Anti-Crime indicates that RMP # 928 is a black Ford Crown Victoria. **New York State Police** warrant check records (encl. 25a-g) indicate that at 11:52pm on December 5, 2005, an officer logged into the warrant database under the tax number 919546 ran a check of § 87(2)(b)'s license plate number—§ 87(2)(b). According to the CCRB's Complaint Tracking System, this tax number is registered to Sgt. Gregory Pekera. The **Management Information Systems Database** (encl. 26a-k) also indicated that § 87(2)(b)'s license plate was run at 11:48pm by an officer logged in under Sgt. Pekera's tax number.

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

This is § 87(2)(b)'s first complaint filed with the CCRB (encl. 6). Neither Sgt. Pekera nor PO Kobylinski have had any substantiated CCRB complaints filed during their respective nine- and eight-year tenures with the NYPD (encl. 4 and 5).

Conclusions and Recommendations

Officer Identification

Neither § 87(2)(b) nor § 87(2)(b) was able to obtain the names or shield numbers of Sgt. Pekera or PO Kobylinski. All three of the victims provided relatively similar physical descriptions of Sgt. Pekera, stating that he was a white male between 5'7" and 5'8" with a medium build, dark hair, wearing a dark coat and jeans. Sgt. Pekera's pedigree information indicates that he is a white male with brown hair, 5'9" with a medium build (encl. 15). § 87(2)(g)

They all agreed that he was a white male with a tall, slim build, but while § 87(2)(b) stated that PO Kobylinski had full, gray hair, § 87(2)(b) said that he had thinning reddish-colored hair, and § 87(2)(b) said he had thinning whitish-colored hair. PO Kobylinski's true pedigree information states that he has full, brown hair (encl. 18), § 87(2)(g)

According to the NYSP and MISD warrant check records (encl. 25a-g, 26a-k), an officer using the tax number of Sgt. Gregory Pekera ran § 87(2)(b)'s license at virtually the same time that § 87(2)(b)'s car was pulled over on December 6, 2005. The § 87(2) family stated that they were pulled over by a black Crown Victoria—according to the roll call and vehicle information provided by Manhattan North Anti-Crime, PO Kobylinski and Sgt. Pekera were assigned to a black Crown Victoria, RMP # 928 (encl. 23 and 24). During each of their interviews, both Sgt. Pekera and PO Kobylinski explained that they were patrolling in the confines of the 26th Precinct on their December 5 to December 6, 2005 tour. The location of the vehicle stop provided in § 87(2)(b)'s complaint was W. 134th Street and Convent Avenue, which falls within the 26th Precinct. § 87(2) and § 87(2)(b) heard one of the officers say that they worked for "Auto Crime," and both PO Kobylinski and Sgt. Pekera were assigned to the "Auto Larceny" unit on the date of the incident. Additionally, § 87(2)(b) and § 87(2)(b) each stated that one of the officers identified himself as a sergeant. § 87(2)(b) also stated that the other officer had a silver officer badge hanging around his neck. § 87(2)(g)

§ 87(2)(b) and § 87(2)(b) each alleged that they were pulled over and approached by both officers, § 87(2)(g). § 87(2)(b) stated that he was frisked and searched by the sergeant on the scene, with a physical description matching Sgt. Pekera, § 87(2)(g). § 87(2)(b) stated that he was frisked and searched by the officer wearing a badge around his neck, § 87(2)(g). § 87(2)(b) also alleged that the officer matching PO Kobylinski's description frisked and searched him as well, § 87(2)(g). § 87(2)(b) and § 87(2)(b) each alleged that the officer fitting PO Kobylinski's description searched the interior of the vehicle after they were searched. § 87(2)(b) and § 87(2)(b) also stated that both officers later searched the vehicle's trunk. § 87(2)(g). Additionally, each victim alleged that the officer who searched the interior of the vehicle (PO Kobylinski) damaged the back seat in the process, § 87(2)(g). § 87(2)(b). Finally, § 87(2)(b) stated that he asked both officers for their names and shield numbers, and that neither provided them § 87(2)(g).

Facts in Dispute

§ 87(2)(g)

Credibility Assessment

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation A: Abuse of Authority: Sgt. Gregory Pekera stopped the vehicle in which § 87(2)(b) was an occupant.

§ 87(2)(b) admitted that at the time he was stopped, he was driving at a reduced speed so that § 87(2)(b) and § 87(2)(b) could properly read the license plate numbers of the cars they were observing. Other than that, he did not state that he committed any traffic law infractions at the time leading up to the vehicle stop. According to Vehicle and Traffic Law of the State of New York (encl. 1), “No person shall drive a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for the safe operation or in compliance with law.” § 87(2)(g)

Allegation B: Abuse of Authority: Sgt. Gregory Pekera frisked § 87(2)(b)

§ 87(2)(g)

§ 87(2)(b) claimed that at the time he was stopped, he was wearing a belt under his jacket that had a gun holster attached to it. After he was ordered out of his car, Sgt. Pekera immediately began to pat him down. When Sgt. Pekera did this, § 87(2)(b)'s holster was not visible due to the fact that it was covered by his jacket. § 87(2)(g)

Barry Kamins's New York Search and Seizure outlines several factors that support reasonable suspicion when an officer comes across a bulge on a person's body. Kamins states that with regard to conducting a lawful frisk of a person, “the observation of the outline or configuration of a gun underneath a shirt [is] sufficient to form a reasonable suspicion” (encl. 2c). § 87(2)(g)

§ 87(2)(g)

Allegation C: Abuse of Authority: Sgt. Gregory Pekera searched § 87(2)(b)

§ 87(2)(b) claimed that after Sgt. Pekera had patted him down around his belt, he lifted his jacket to examine his waist area. Sgt. Pekera asked § 87(2)(b) what he was doing, so § 87(2)(b) explained the nature of his work and why he was carrying the equipment he had. § 87(2)(g)

§ 87(2)(b) Kamins states that “if the officer cannot legitimately determine whether a hard object is a weapon, he may reach in to determine the nature of the object” (encl. 2a-b). § 87(2)(g)

§ 87(2)(b) Kamins states that “an officer may seize [an] object if he reasonably believes it to be a weapon” (encl. 2a) § 87(2)(g)

Allegation D: PO Daniel Kobylinski frisked § 87(2)(b) and § 87(2)(b)

Allegation E: PO Daniel Kobylinski searched § 87(2)(b) and § 87(2)(b)

§ 87(2)(g)

§ 87(2)(b) § 87(2)(b) claimed to be searched at the same time as § 87(2)(b) § 87(2)(g) he said he saw § 87(2)(b) being searched by PO Kobylinski after his “five to ten minute” search was already complete. Furthermore, he claimed to watch PO Kobylinski search § 87(2)(b) from where he was sitting, on the car’s rear bumper. While both § 87(2)(b) and § 87(2)(b) claimed that it was PO Kobylinski who searched § 87(2)(b) § 87(2)(b) stated that Sgt. Pekera performed the frisk and search of his nephew. § 87(2)(g)

§ 87(2)(b) According to *People v. Battista*, the New York Court of Appeals outlines circumstances whereby an officer is permitted to frisk an individual if they appear to be wearing a vest of this nature. It states that, “Although a bullet-proof vest is properly linked to the inference that the wearer might be carrying a gun, more is usually required to justify a frisk of the suspect” (encl. 2d, 3) § 87(2)(g)

§ 87(2)(g)

Allegation F: Abuse of Authority: PO Daniel Kobylinski searched the vehicle in which § 87(2)(b) was an occupant.

Allegation G: Abuse of Authority: PO Daniel Kobylinski damaged § 87(2)(b)'s property.

Allegation H: Abuse of Authority: Sgt. Gregory Pekera searched the vehicle in which § 87(2)(b) was an occupant.

Each member of the § 87(2) family alleged that PO Kobylinski searched the interior of § 87(2)(b)'s car. § 87(2)(b) stated that in the process of searching his car, PO Kobylinski broke the clips that held the seat to the floor of the vehicle's interior. § 87(2)(g)

§ 87(2)(b) never mentioned any officer searching the trunk of the car. He claimed that as soon as PO Kobylinski finished searching the inside of the car, he and Sgt. Pekera left the scene. § 87(2)(g)

Allegation I: Abuse of Authority: Sgt. Gregory Pekera refused to provide his name and/or shield number to § 87(2)(b)

Allegation J: Abuse of Authority: PO Daniel Kobylinski refused to provide his name and/or shield number to § 87(2)(b)

§ 87(2)(b) claimed that he asked Sgt. Pekera for his name while PO Kobylinski was searching his vehicle. According to § 87(2)(b) Sgt. Pekera replied that he was a sergeant and that his name was "Matt." § 87(2)(b) did not remember if Sgt. Pekera ever provided his name. § 87(2)(b) did not know if § 87(2)(b) ever asked Sgt. Pekera for his name at any point, but he corroborated § 87(2)(b)'s claim that Sgt. Pekera told them he was a sergeant and that his name was "Matt." § 87(2)(b) stated that he asked Sgt. Pekera what command he worked for, and Sgt. Pekera replied that he was with the "Auto Crime," and that he worked "all over." While Sgt. Pekera does not actually work for the NYPD's Auto Crime Division, he does work in the Auto Larceny Unit of Manhattan North Anti-Crime. § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: